



POLICE DEPARTMENT

June 9, 2011

MEMORANDUM FOR: Police Commissioner

Re: Detective Antoine Mole
Tax Registry No. 932185
Manhattan Court Section
Disciplinary Case No. 83996/08

The above-named member of the Department appeared before me on February 2, February 10, and March 9, 2011, charged with the following:

1. Said Detective Antoine Mole, assigned to Narcotics Borough Brooklyn North, on or about and between October 1, 2006 and April 7, 2008, at a location known to this Department, in Kings County, did steal property and the value of property exceeded three thousand dollars.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
NYS PENAL LAW SECTION 155.35 - GRAND LARCENY IN THE THIRD
DEGREE

2. Said Detective Antoine Mole, assigned to Narcotics Borough Brooklyn North, on or about and between October 1, 2006 and April 7, 2008, at a location known to this Department, in Kings County, knowing that a written instrument contained a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offered or presented it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it would be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 175.35 - OFFERING A FALSE INSTRUMENT
FOR FILING IN THE FIRST DEGREE

3. Said Detective Antoine Mole, assigned to Narcotics Borough Brooklyn North, on or about and between October 1, 2006 and April 7, 2008, at a location known to this Department, in Kings County, engaged in a scheme constituting a systematic ongoing

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course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 190.65 (1) (b) - SCHEME TO DEFRAUD IN
THE FIRST DEGREE

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and the Respondent was represented by Philip Karasyk, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty in part of Specification No. 2 and Not Guilty of Specification Nos. 1 and 3.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Tiffany Simmons and Sergeant Larry Flunory as witnesses.

Tiffany Simmons

Simmons is employed as a confidential investigator with the New York City Department of Investigations, New York City Housing Authority (NYCHA), Office of

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the Inspector General. In late 2007, she became involved in the investigation of Person A for Section 8 fraud. The investigation involved the allegation that Person A was residing in Section 8 housing with her landlord (subsequently identified as the Respondent), who was also the father of her children. As part of her investigation, Simmons reviewed the Housing Assistance Payment (HAP) contract pertaining to Person A tenancy. Simmons explained that HAP contracts are agreements between NYCHA and Section 8 landlords. The contract is ten pages long with a line on the second page for the landlord's signature. In this case, the Respondent contracted for Person A to rent a Section 8 apartment that he owned on [REDACTED] in Brooklyn. The first page of the contract contained the apartment address, and Person A was named as the tenant. Person A and four other people (Minor B Minor C Minor E and Minor D [REDACTED]) were listed as household members. It was indicated that they all shared the same last name ([REDACTED]). There was no indication made on the contract of the Respondent having a relationship with any of them. Simmons conceded that there was no space on the contract for such an indication to be made. [The parties stipulated that Minor B Minor C and Minor D are, in fact, the Respondent's children.]

The second page of the HAP contract contained the Respondent's signature. Simmons testified on *voir dire* that she was not present when the Respondent received his contract, and landlords are not required to sign their contracts in the presence of NYCHA representatives. In addition to the signature, the Respondent's address was written on this page. The address listed was on [REDACTED] in Brooklyn. During the course of her investigation, Simmons learned that that address belonged to the Respondent's parents. The terms of the contract are on subsequent pages. [Department's Exhibit (DX)]

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1 is a copy of the HAP contract for the Section 8 apartment owned by the Respondent. The contract states on page five, "During the term of this contract the owner certifies that [he] is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family unless the public housing agency has determined . . . that approving rental of the unit notwithstanding such relationship would provide reasonable accommodation for a family member who is a person with disabilities." The contract is dated August 18, 2006.]

The Respondent has two mortgages on the property he owns on [REDACTED]

[REDACTED] Simmons reviewed the mortgage paperwork. According to this paperwork, the property is classified as a two-family dwelling, and the Respondent is required to live there. Simmons testified that the HAP contract does not allow a landlord to live in the same building as a tenant to which he is related. This is true no matter how many apartments the building is divided into. Both the Respondent and Person A signed a form called a Request for Tenancy Approval. They signed directly below a certification nearly identical to the rental restriction found on page five of the HAP contract. (It reads, "The owner is not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the public housing authority has determined that approving leasing of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.") There were no reasonable accommodations granted by NYCHA in the Respondent's case. [DX 2 is a copy of the Request for Tenancy Approval form. It was signed by the Respondent and Person A on August 18, 2006.]

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On the day that the Respondent signed the Request for Tenancy Approval form, he also prepared a Leased Housing Department Additional Landlord Information form relating to Person A tenancy. It was asked on this form if the owner is related to the tenant. The "no" box was marked in response to the question. [DX 3 is a copy of the Leased Housing Department Additional Landlord Information form, signed by the Respondent on August 18, 2006.]

As part of her investigation, Simmons learned that the postal service had the Respondent and Person A listed as mail recipients at the downstairs apartment at the [REDACTED] address. Person F [REDACTED] was listed as the mail recipient at the upstairs apartment. In a January 7, 2008, interview, Person F told Simmons that the Respondent resided in the downstairs apartment with his wife. Simmons observed the Respondent exit the downstairs apartment that day. [DX 4 is a copy of an investigative form that was signed by the mail carrier on January 15, 2008.]

The Respondent was ultimately arrested for Grand Larceny, Offering a False Instrument for Filing, and Scheming to Defraud. He subsequently made a restitution payment to NYCHA in the amount of \$22,288.00. [DX 5 is a copy of the check, dated October 10, 2009.

On cross-examination, Simmons testified that Person A was the only member of her family to sign any of the NYCHA paperwork. On the Leased Housing Department Additional Landlord Information form on which the Respondent indicated that he was not related to his tenant, Person A was the only tenant named. The investigation did not reveal that the Respondent and Person A were married, siblings, or related in any other way. As part of the initial application process for Section 8 housing, Person A submitted birth

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certificates and Social Security cards for all of her children. The birth certificates and Social Security cards for Minor B [Minor C] and Minor D bear the Respondent's last name. NYCHA had these documents prior to the determination that Person A and her family were entitled to Section 8 housing and that the Respondent could rent his apartment to them. [Respondent's Exhibit (RX) A consists of copies of the documents.]

After his arrest, the Respondent acknowledged to Simmons that he had signed the HAP contract. He did not, however, acknowledge reading any part of the contract after the signature line on the second page. Simmons reiterated that landlords are not required to sign their HAP contracts in the presence of NYCHA representatives, and she was not present when the Respondent received his contract. There was, therefore, no way for Simmons to know if the Respondent ever received any of the pages after the second page.

Simmons reiterated that she observed the Respondent walking out of the premises in January 2008. She did not know when the Respondent moved there. The Respondent was in the basement when he was arrested. The basement was accessible only through the downstairs (Person A) apartment. Simmons has never been in the house, and she was not present at the time of the Respondent's arrest. She reiterated that it was impermissible for the Respondent to live in the same building as a tenant to which he was related. This would have been true even if the Respondent lived in the basement. For parties who are not related to each other, there is no "hard and fast rule" that a landlord cannot live in the basement of a house he is renting to Section 8 tenants. No matter where the Respondent lived, however, he was not permitted to rent to anybody to whom he was related without first receiving special permission from NYCHA. During the period of the lease, Person A was qualified to live in Section 8 housing, and the Respondent

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was authorized to receive Section 8 rent. There was no reason to believe that the Respondent was charging excessive rent. [RX B is a copy of the lease entered into by the Respondent and Person A. It was a two-year lease at a rate of \$1,406.00 per month, starting on October 1, 2006.]

On redirect examination, Simmons testified that Person A had lived in Section 8 housing prior to moving into the apartment on [REDACTED]. Simmons did not know when Person A submitted to NYCHA the Social Security cards and birth certificates for her children.

Sergeant Larry Flunory

Flunory, who is currently assigned to the Internal Affairs Bureau (IAB), was assigned to investigate an allegation that the Respondent was receiving Section 8 and other benefits to which he was not entitled. During the course of his investigation, he conducted nine surveillances of the property owned by the Respondent on [REDACTED].

[REDACTED] During three of these surveillances, he observed the Respondent entering the premises. The house contained two apartments. On April 10, 2008, Flunory spoke with Person F [REDACTED] the Section 8 tenant in the upstairs apartment. Person F told Flunory that her landlord lived in the downstairs apartment. When Flunory interviewed Person F a second time, however, she changed her version of the story. This time, Person F stated that she never saw the Respondent enter Person A's apartment and only saw him entering the basement.

When Flunory and a field team went to the house to arrest the Respondent at 9:00 a.m. on April 10, 2008, they rang the doorbell and knocked on the door. Person A asked

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them to wait, and they waited approximately ten minutes before Person A opened the door for them. Person A told Flunory that the Respondent lived in the basement. The basement could be accessed by two doors: one door in Person A apartment and another door on the outside of the house. Because the basement door was locked, Person A went to her kitchen and got a key. When Person A brought Flunory downstairs to the basement, the only furniture he saw there was a cot with clothes on it. The Respondent was leaning over the cot. When a lieutenant asked him for his firearm, the Respondent retrieved his gun from under the sheets. The basement contained a half-bathroom. There was no toothbrush, toothpaste, towels, or anything else in the bathroom to indicate that a person used it. There was a washing machine and dryer somewhere in the basement. There were no kitchen amenities, but there were construction materials.

During the execution of a search warrant of Person A apartment later in the day, Minor E (Person A daughter, who was 17 years old at the time) told Flunory that both Person A and the Respondent slept there. Minor E also told him that she had received instruction from the Respondent to tell the police that he (the Respondent) lived in the basement if ever asked about it.

During an interview at his office that same day, Person A told Flunory that she and the Respondent used to live together on Atkins Avenue. They wanted to move, so the Respondent came up with the idea that he would buy a building, become a Section 8 landlord, and rent an apartment to her. After buying the house, the Respondent ultimately updated his records with both this Department and the Department of Motor Vehicles (DMV) to show the [REDACTED] address as his home address. The Respondent's address was changed in the official Department personnel profile computer

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database in August 2005 and it was changed on his “ten card” [Force Record] in November 2006.

On the day of his arrest, the Respondent told Flunory that he is the father of three of Person A children. The Respondent ultimately pleaded guilty to Disorderly Conduct. [IDX 6 is a copy of a Certificate of Disposition, showing that the Respondent was convicted by plea of Disorderly Conduct on October 26, 2009.] Person F still resides at the [REDACTED] address as a Section 8 tenant, and the Respondent is still her landlord.

On cross-examination, Flunory testified that the specific date that the Respondent changed the address on his ten card to [REDACTED] was on November 15, 2006. [The parties stipulated that the Respondent took ownership of the house in August of that year.] Of the nine surveillances of the house, Flunory personally conducted five of them. These five took place between March 13 and March 22, 2008. On each of those days, he observed the Respondent enter the premises through the “doorway to the right,” which was the door that led to Person A apartment. While Flunory prepared a worksheet for each surveillance, he did not include on any of the worksheets anything about the Respondent using the door on the right side, and on only one of the worksheets did he mention the Respondent walking up the front stairs toward the door. Flunory agreed that the other worksheets talked about the Respondent’s car being parked in front of the house or the Respondent standing on the stairs with no mention of him entering the house at all.

According to a worksheet generated by Flunory, Person F told Simmons that the Respondent lived downstairs. There was no indication made on the worksheet of whether “downstairs” meant Person A apartment or the basement. Flunory reiterated that Person A

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made the police wait outside after they knocked on the door on April 10, 2008. Flunory testified that they waited outside for ten to 15 minutes. This is the same timeframe that he gave when testifying about the matter before the grand jury. On a worksheet that he generated on April 17, however, he indicated that he knocked on the door at 8:25 a.m. and was let in to the house at 8:30 a.m. The worksheet further indicated that the Respondent was informed at 8:35 a.m. that he needed to report to IAB. Flunory explained that the times given in the worksheets were just his approximations. The Respondent was fully clothed when Flunory found him in the basement.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent, an eight-year member of the Department, is currently assigned to the Manhattan Court Section. He has never before been the subject of Department charges. He testified that he and Person A have three children in common: 17-year-old Minor B, eight-year-old Minor C, and five-year-old Minor D. He and Person A started dating in 1993 and had an "on-and-off relationship" until 2005. The Respondent never married Person A and had moved on to a relationship with another woman by 2006.

In 2006, the Respondent purchased the house on [REDACTED] Person A suggested that he become a Section 8 landlord, and in August 2006 he and Person A went to the Section 8 office in Brooklyn to speak with Kim Chan about the matter. The Respondent informed Chan that he was the father of Person A children, and Person A gave

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Chan the children's birth certificates and Social Security cards. Chan proceeded to make copies of this documentation. The Respondent went on to tell Chan that he was planning on living in the basement of the property. Chan replied that this would not be a problem so long as he did not live at all in Person A apartment. The Respondent, who had already signed the Section 8 documents (including the HAP contract) before the meeting, gave Chan the paperwork. He never actually read the documents, and Chan helped him to answer certain questions. The Respondent had never before been involved in the Section 8 program, and he did not consult with a lawyer about the paperwork. The meeting with Chan lasted a few minutes. After his arrest, he went back to see Chan. Chan seemed surprised.

Because the mortgage required him to live on the premises, he split his time between the basement on [REDACTED] and his parents' home on [REDACTED]. Shortly after purchasing the house, he changed the address on his driver's license to the [REDACTED] address. It indicated on his license that he lived in apartment "B1," which stood for the basement. [RX C was marked for identification and is a document that the Respondent claimed is a renewal form from the Department of Motor Vehicle (DMV) for his driver's license. The form, which the Respondent received in the mail the month before trial, shows that the [REDACTED] address, apartment B1, was the most recent address that the Respondent had listed with the DMV. The document was not accepted into evidence because it did not appear to be an official document of the DMV.] The Respondent also maintains a post office box because he works undercover and wants to protect his identity.

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On the day that the search warrant was executed, Flunory and the field team found the Respondent lying on his futon under the sheets. According to the Respondent, Flunory's testimony that the basement did not have cooking devices, television, or toiletries was inaccurate. He stated that there were, in fact, toiletries down there, along with toilet paper, a toothbrush, sheets on the futon, and an electrical stove. The police did not find any of the Respondent's personal property in Person A apartment. Minor E subsequently told the Respondent that the police threatened to arrest her. Minor E who was 17 years old at the time, was scared and crying.

The Respondent was charged with three felonies, but all three counts were satisfied with his pleading guilty to a violation. In addition, he paid \$22,000 in restitution. He is still a Section 8 landlord. He still lives on [REDACTED] but Person A has moved elsewhere. The Respondent stated that at no point while Person A lived on [REDACTED] did he spend the night in her bed.

On cross-examination, the Respondent testified that he has two mortgages on the [REDACTED] property. The mortgage paperwork describes the property as a "dwelling-only, two-family house." Before the Respondent met with Chan in August 2006, Person A had conferred with Chan about the possibility of the Respondent becoming her Section 8 landlord. Person A gave the Respondent the second page of the HAP contract to sign. Person A prepared the first page of the contract herself. On that page, Person A listed "Person A" as the children's last name. The Respondent never reviewed it. Person A had been a Section 8 tenant prior to moving to [REDACTED]. The Respondent did not know if Person A submitted the children's birth certificates and Social Security cards when she

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applied for her previous Section 8 housing. Person A had to move out the previous housing because it had become uninhabitable due to roach infestation.

When the Respondent met with Chan the first time, he showed her his driver's license. At the time, the license had the Linden Boulevard address on it. He had not yet moved into the [REDACTED] property, and the Respondent used the [REDACTED] [REDACTED] address for all of his Section 8 paperwork. He subsequently notified NYCHA that they should start sending paperwork to his post office box instead. That is where he received his rent checks for both of his Section 8 apartments. He reiterated that he has mail sent to his post office box because he works undercover and wants to protect his identity.

The bathroom in the basement of the [REDACTED] property contained a toilet and sink. There was no shower. He slept on a futon, which was like a long couch that could be flattened down into a bed. He had a small pot and pan, but there was no refrigerator. The electric stove was very small and contained one burner. There was a television, but it was broken. There was a closet where he kept clothes.

Because the Respondent was sleeping, he did not hear the field team knocking on the door on the day of his arrest. Person A did not scream downstairs to give him notice. When the team entered his room, he jumped up in fear. He did not realize at the time that they were members of the service. The Respondent reiterated that he went to see Chan after his arrest. He explained that he went to see Chan because her advice had gotten him into trouble. He never read the Section 8 paperwork because Chan had advised him that it was alright for him to rent to Person A. Only after the arrest did he realize that he could not live in a building that he owned while he rented to a tenant he was related to.

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The Department called Kim Chan as a rebuttal witness.

Kim Chan

Chan has been employed for eight years by NYCHA, where she works as a Housing Assistant in the Transfer Department. In 2006, she reviewed the HAP contract for the [REDACTED] property. It was part of Person A "transfer package." Chan explained that transfer packages consist of the paperwork necessary for an already-existing Section 8 tenant to move from one apartment to another. The packages are separate and apart from a tenant's initial Section 8 application paperwork.

Chan testified that there was nothing in Person A transfer package to indicate a familial relationship between Person A and the Respondent. Nor was there any indication of a familial relationship between the Respondent and Person A children. Chan explained that to determine familial relationships, she reviewed the Additional Landlord Information form. In the Respondent's case, he marked "no" where it asked if the owner is related to the tenant. In addition, Chan reviewed the last names of the parties involved. On the HAP contract in this case, Person A was given as the last name for all of the children. Chan did not look any place else to determine a relationship. She explained that according to NYCHA rules, Section 8 landlords and tenants cannot be related to each other unless they have a reasonable accommodation. This rule, which is written into the HAP contract, holds true whether or not the parties live on the same premises. A reasonable accommodation was never granted in the Respondent's case. The fact that the

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Respondent turned out to have a familial relationship with the Person A children constituted a breach of the HAP contract. According to Chan, Person A never submitted to her the children's birth certificates or Social Security cards.

On cross-examination, Chan testified that Person A would have submitted the birth certificates and Social Security cards when she first applied to become a Section 8 tenant. These documents would have remained on file with NYCHA, but Chan never reviewed them. It was Person A who would have received the HAP contract from NYCHA. While the Respondent signed the second page, Chan did not know if Person A ever showed him the rest of the contract. The only way for a landlord to know the prohibition against renting to relatives would be by reading the contract. Landlords and tenants who are not related are allowed to live in the same building, so long as they have separate apartments. [RX D is a copy of a NYCHA approval letter. It was signed by Chan, and copies of the letter were sent to both Person A and the Respondent. The letter announced NYCHA's approval for Person A to move into the Respondent's property for a period of two years starting on October 1, 2006. The approved rental rate was \$1,406.00 to the Respondent each month with \$202.00 coming from Person A and \$1,204.00 coming from NYCHA.]

FINDINGS AND ANALYSIS

In Specification No. 1, the Respondent is charged with stealing property valued in excess of three thousand dollars. The Department, along with charging that the Respondent engaged in conduct prejudicial to the Department under the Patrol Guide, he is also charged with grand larceny under New York State's (NYS) Penal Law. Under section 155.35, Grand Larceny in the Third Degree, "A person is guilty of grand larceny

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in the third degree when he steals property and when the value of the property exceeds three thousand dollars." According to the Penal Law, to steal property and commit a larceny a person must have the *intent* to deprive another of property.

In Specification No. 2, the Respondent is charged with conduct prejudicial to the Department, under the Patrol Guide, in that with intent to defraud a public entity he knowingly offered a written instrument that contained false statements/information with knowledge that it would be filed with and made part of the public records of the New York City Housing Authority (NYCHA). He is also charged under the NYS Penal Law section 175.35, Offering a False Instrument for Filing in the first Degree, a Class E Felony. That Penal Law section is mirrored in the specification.

In Specification No. 3, the Respondent is further charged under the Patrol Guide, with conduct prejudicial to the Department in that he engaged in a scheme constituting an ongoing course of conduct with intent to defraud or obtain property by false or fraudulent pretenses with a value in excess of one thousand dollars. He is also charged under the NYS Penal Law section 190.65 (1) (b) Scheme to Defraud in the First Degree a Class E Felony. That Penal Law section is mirrored in the specification.

The Department's position regarding the ongoing course of conduct to defraud pertains to the Respondent receiving the Section 8 subsidy checks from October 1 2006, to April 7, 2008, from NYCHA.

The Respondent is an authorized NYCHA Section 8 housing landlord. He applied for and received approval for this classification in 2006, and purchased a two-family house on [REDACTED] Brooklyn, New York, for the purpose of renting the units under the Section 8 classification. As such, he rented the two apartments in that

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building to qualified Section 8 tenants--the second floor to a Person F [REDACTED] and the first floor to Person A [REDACTED] and her four children.

The allegations in this case arise from the Respondent renting the first floor apartment to Person A [REDACTED] who is the mother of three of his children. When a Section 8 landlord rents an apartment to a Section 8 tenant there are certain requirements that the Section 8 landlord must adhere to. These requirements are listed in the HAP contract and other documents that the Respondent signed for NYCHA's approval. Included in the NYCHA rules is the provision that a Section 8 landlord cannot rent to relatives or live in the same residence with them unless he obtains a reasonable accommodation/ approval from NYCHA. Since it is alleged that he rented to family members and lived at the same residence with them without getting the approval, he is accused of committing the criminal act of fraud for the deception he created when he filed his signed documents without acknowledging his family ties to his children; and larceny for accepting Person A [REDACTED] Section 8 rent during the time she leased the apartment.

The HAP contract (DX 1) lists the address, rent and dates of occupancy. It also lists the "persons" that will reside in the unit. The tenants listed for the first floor apartment are Person A [REDACTED] Minor B [REDACTED] Minor C [REDACTED] Minor E [REDACTED] and Minor D [REDACTED]. The contract was signed by the Respondent on August 18, 2006, and by a representative of the Public Housing Agency, whose name is not legible on September 28, 2006. The Respondent gave his address as located on [REDACTED]
[REDACTED] New York.

The contract has two parts: "Part A of the HAP Contract: Contract Information" consisting of pages 1 and 2 of a 10-page packet. Part A is followed by "Part B of HAP

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Contract: Body of Contract" indicating to this Court that all the important provisions of the contract are not conspicuously attached to and actually come after the aforementioned two-page particulars of the contract in Part A, including the signature page. Nowhere in the first two pages is it stated that the Respondent is not permitted to rent to his relatives. More importantly, it is not indicated in those two pages of the contract that any of the Respondent's three children, **Minor B** **Minor C** and **Minor D** have his last name, Mole, only the last name "**Person A**" appears for each one of them. Yet they do carry his last name on either their birth certificates or social security cards. (RX A)

In Part B page 5 paragraph (g) of the document under "Owner Certification" it does indicate that the "owner (including a principal or other interested party) is not the parent...of any member of the family unless PHA..." after notifying the owner and the family determined that "a reasonable accommodation for a family member who is a person with disabilities" (DX 1). This Certification also appears on page 2 paragraph (b) of the "Request for Tenancy Approval" form where it is listed that **Person A** is the household head and the document is signed by the Respondent. He also signed and gave the [REDACTED] address on this form (DX 2).

The Respondent also signed a document titled "New York City Housing Authority Leased Housing Department" with instructions that it should be submitted with signed leases and contracts (along with other documents). In one area of the form there is a box that asks, "Is owner related to Section 8 Tenant" and a smaller box containing the answer "No" was clearly checked. The tenant's name that appears on that document is **Person A** (DX 3). The Respondent's signature appears below and in close proximity to this area of the form.

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The "Apartment Lease" lists Person A [REDACTED] as the tenant and the Respondent as the landlord. They both signed the lease which does not contain any prohibition against having a tenant that is a relative of the landlord (RX B).

Tiffany Simmons, the investigator with the Department of Investigation, investigated the allegations that Person A was residing in Section 8 housing with her landlord, the father of her children. During her investigation, Simmons reviewed the documents previously mentioned. She learned from the HAP contract (DX 1) that the Respondent did not reveal that he had a relationship with the [REDACTED] family—specifically with his three children. She noted that while the second page of the contract contained the Respondent's signature, there was no requirement that landlords had to sign these contracts in the presence of a NYCHA representative.

Simmons also learned that the [REDACTED] address listed on the document was the address of the Respondent's parents and pointed out that the terms of the HAP contract are contained in subsequent pages with page 5 listing the prohibitions against renting to family members of Section 8 landlords. She explained that the HAP contract does not allow the landlord to live in the same building with his family. When she reviewed the previously mentioned Request for Tenancy Approval form (DX 2) she saw that he signed his name under the prohibition against renting to family members and on the Leased Housing Department Additional Information (DX 3) he check the "No" box in response to being asked if the owner is related to the tenant.

Simmons told this Court that since the Respondent was not required to sign the contract in front of NYCHA representative, she had no way of knowing whether he received and reviewed any of the pages after the signature page in the HAP contract. He

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told her that he signed the contract, but did not acknowledge reading any of the material after the signature.

Simmons made a point of telling this Court that there was no "hard and fast rule" that a landlord cannot live in the basement of the house he is renting to a Section 8 tenant, but no matter where he lived he was not allowed to rent to a family member without approval from NYCHA. She learned that the postal service had the Respondent and Person A listed as mail recipients in the downstairs apartment at the [REDACTED] address (DX 4) and Person F told her that the Respondent lived in the downstairs apartment with his wife. In addition, Simmons observed the Respondent exiting the downstairs apartment where Person A lived on January 7, 2008. She did not know when he moved there and stated that he was arrested in the basement.

According to Simmons, the Respondent was a legitimate Section 8 landlord and there was no evidence that he was charging excessive rent. After being arrested for the aforementioned allegations the Respondent paid restitution in the amount of \$22,288.00 to NYCHA (DX 5). Her investigation also revealed that as part of the initial application process for Section 8 housing, Person A submitted birth certificates and Social Security cards for all of her children and those documents pertained to Minor B, Minor C and Minor D bear the Respondent's last name. She also noted that NYCHA had these documents prior to the determination that Person A and her family were entitled to Section 8 housing and that the Respondent could rent his apartment to them. (RX A consists of copies of the documents.)

IAB investigator Flunory learned that the Respondent had changed his address to the [REDACTED] building on November 15, 2006. Flunory had personally

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conducted five surveillances of that building, between March 13 and March 22, 2008, and on each of those occasions he observed the Respondent enter the premises through a door that led to Person A apartment. At first, Person F told him that the Respondent lived in the downstairs apartment with Person A but later changed her story telling him that she only saw him entering the basement apartment. Flunory stated that Minor E , Person A's 17-year-old daughter, told him that both Person A and the Respondent slept in the apartment and also said that she had received instructions from the Respondent to tell police that he lived in the basement.

When Flunory went to [REDACTED] to arrest the Respondent he knocked on Person A door and was made to wait about 10 minutes before she opened the door. Person A told Flunory that the Respondent lived in the basement which could be accessed by two doors: one door in Person A apartment and another door from outside the house. Flunory found the Respondent in the basement near a cot. He also noted that the basement did not have the amenities necessary for what would be considered an apartment.

The Respondent's version is that when he bought the house on [REDACTED] he and Person A went to the Section 8 office and spoke to Kim Chan about him becoming a Section 8 landlord and Person A moving into his building. At that time, he informed Chan that he was the father of Person A children and Person A gave Chan copies of their children's birth certificates and social security cards (RX A). According to the Respondent, he told Chan that he would be living in the basement apartment and her response was that there would be no problem so long as he did not live in Person A apartment.

The Respondent, a first time Section 8 landlord, stated that he had already signed the Section 8 documents, including the HAP contract, prior to meeting with Chan and

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claimed that he had not read anything on the paperwork nor consulted with an attorney. He said that Chan helped him with certain questions. Prior to the Respondent meeting with Chan, Person A had previously met her in August 2006 about him becoming a Section 8 landlord. According to the Respondent, Person A filled out the first page of the contract where she listed 'Person A' as the children's last name. She then gave him the second page for him to sign which he claims he did not review. Both the Respondent and Person A wanted her out of her previous Section 8 apartment because it was unsuitable to live in due to roach infestation. The Respondent further claimed that he went to see Chan after he was arrested because he wanted to tell her that the advice she gave him got him in trouble. It was only after his arrest that he learned that he could not live in a building that he owned while renting an apartment to a relative.

With regard to him living in the basement, he explained that his mortgage required him to live in the building so he split his time between his mother's house on [REDACTED] and the basement of his building. He said that the basement was fit for living in with a futon to sleep on, an electric stove and toiletries. He added that the police did not find any of his personal property in Person A home.

Chan reviewed the HAP contract for the [REDACTED] apartment as part of Person A transfer package, which was separate from any Section 8 tenant paperwork that she previously submitted. Chan did not see anything in Person A transfer package to indicate that there was any family connection with the Respondent or with her children. This was especially evident to her where the Respondent had marked "No" in the Additional Landlord Information form. Nor did the last names of the parties indicate there was a family connection.

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She pointed out that Section 8 landlords and tenants cannot be related unless there is approval by NYCHA. She stated that the fact that the Respondent turned out to have a familial relationship with the Person A children constituted a breach of the HAP contract. She also claimed that she never received the children's birth certificates or Social Security cards. These documents would have been submitted when Person A first applied for Section 8 and would have remained on file with NYCHA.

With regard to the HAP contract, Chan stated that Person A would have been the one to receive the contract from NYCHA and while the Respondent signed the second page she did not know if Person A showed him the rest of the contract. Chan stated that she saw the Respondent after the investigation of him began, but did not remember seeing him before that time—although she admitted that anything was possible concerning a prior appointment with him.

Chan signed the letter approving the rental for Person A

This Court finds that the Respondent had to be informed of NYCHA's prohibitions against renting to family members. As previously mentioned, at least two of the documents conspicuously had, in very close proximity to the signature line where the Respondent signed his name, an "Owner's Certification" instructing the owner that renting to relatives can only be done if NYCHA grants a reasonable accommodation for those relatives (DX 2 and 3). In addition, the Respondent just bought his first house and it is inconceivable that he would not want to scrutinize any document referring to his house before he signed documents to avoid the possibility of signing away valuable rights to that property. As such, he had to have seen the clause prohibiting the rental to family

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members in the documents he signed and allowed those documents to be filed without acknowledging his relationship to Person A and his children.

While this Court finds that, by allowing those documents to be filed, his conduct was certainly prejudicial to the Department, but that conduct does not rise to the level of intent to commit a criminal act under the Penal Law. He did not commit fraud to become a Section 8 landlord, he was already authorized to be such a landlord, and he did not commit larceny by collecting rent for a Section 8 tenant because he was also entitled to collect such rent. What he was not entitled to do under the HAP contract was to rent to a Section 8 tenant who he was related to. Having disregarded this prohibition, he violated the terms of the HAP contract at best, a civil matter requiring civil remedies.

The Respondent was initially arrested and charged with fraud and larceny, but the District Attorney backed off those serious allegations and allowed him to plead guilty to Disorderly Conduct, a plea which has none of the elements of the crimes charged (DX 6). NYCHA, in turn, accepted the Respondent's payment of \$22,288.00 in restitution (DX 5), a civil remedy, and continues to allow him to remain a Section 8 landlord. Likewise, Person A also maintains her status as a Section 8 tenant. None of their prior positions with NYCHA would have remained as they were had the Respondent committed fraud and larceny against NYCHA.

With regard to the Respondent living in the basement of [REDACTED] there was no conclusive evidence as to where he lived. This Court is not totally convinced that he did not stay in Person A apartment, but the hearsay statements, surveillance and postal records presented as evidence are sketchy, at best. Even if he did live with Person A full

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time, he, again, was violating the conditions of NYCHA—a possible contract-breaking event, not a criminal act.

Based on the foregoing, this Court finds the Respondent Guilty of that portion of Specification No. 2 relating to the conduct prejudicial to the Department under the Patrol Guide and Not Guilty as to Specification No. 2 charging him with violating the Penal Law. This Court also finds him Not Guilty of Specification Nos. 1 and 3 because no larceny or scheme to defraud was committed by the Respondent.

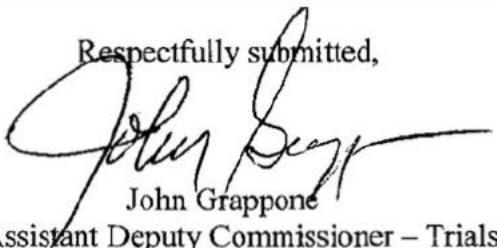
PENALTY

The Respondent has been found Guilty of allowing a HAP contract and related NYCHA documents to be filed with that office containing false information in connection with renting one of his Section 8 apartments to Person A and his three children. This Court is mindful that the Respondent's intention may have been to provide living quarters for his children and their mother away from the roach-infested apartment they had been living in. But this goal does not excuse him from filing documents with NYCHA that were not totally forthright with regard to his relationship with his children. While his conduct was not criminal, it was nonetheless a serious violation of the Patrol Guide's prohibition of committing conduct prejudicial to the Department.

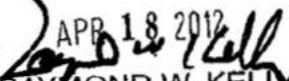
Based on the foregoing and the Respondent's service record, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further

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proceedings. I further recommend that the Respondent forfeit thirty two (32) days previously served while on pre-trial suspension and further forfeit an additional eight (8) vacation days for a total penalty period of 40 days.

Respectfully submitted,

John Grappone
Assistant Deputy Commissioner – Trials

APPROVED

APR 18 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ANTOINE MOLE
TAX REGISTRY NO. 932185
DISCIPLINARY CASE NO. 83996/08

The Respondent received an overall rating of 4.0 "Highly Competent" on his last annual performance evaluation. [REDACTED]

[REDACTED] In September 2008, he was placed on Level II Discipline Monitoring due to serious misconduct. The Respondent has no prior formal disciplinary record.

For your consideration.



John Grappone
Assistant Deputy Commissioner Trials